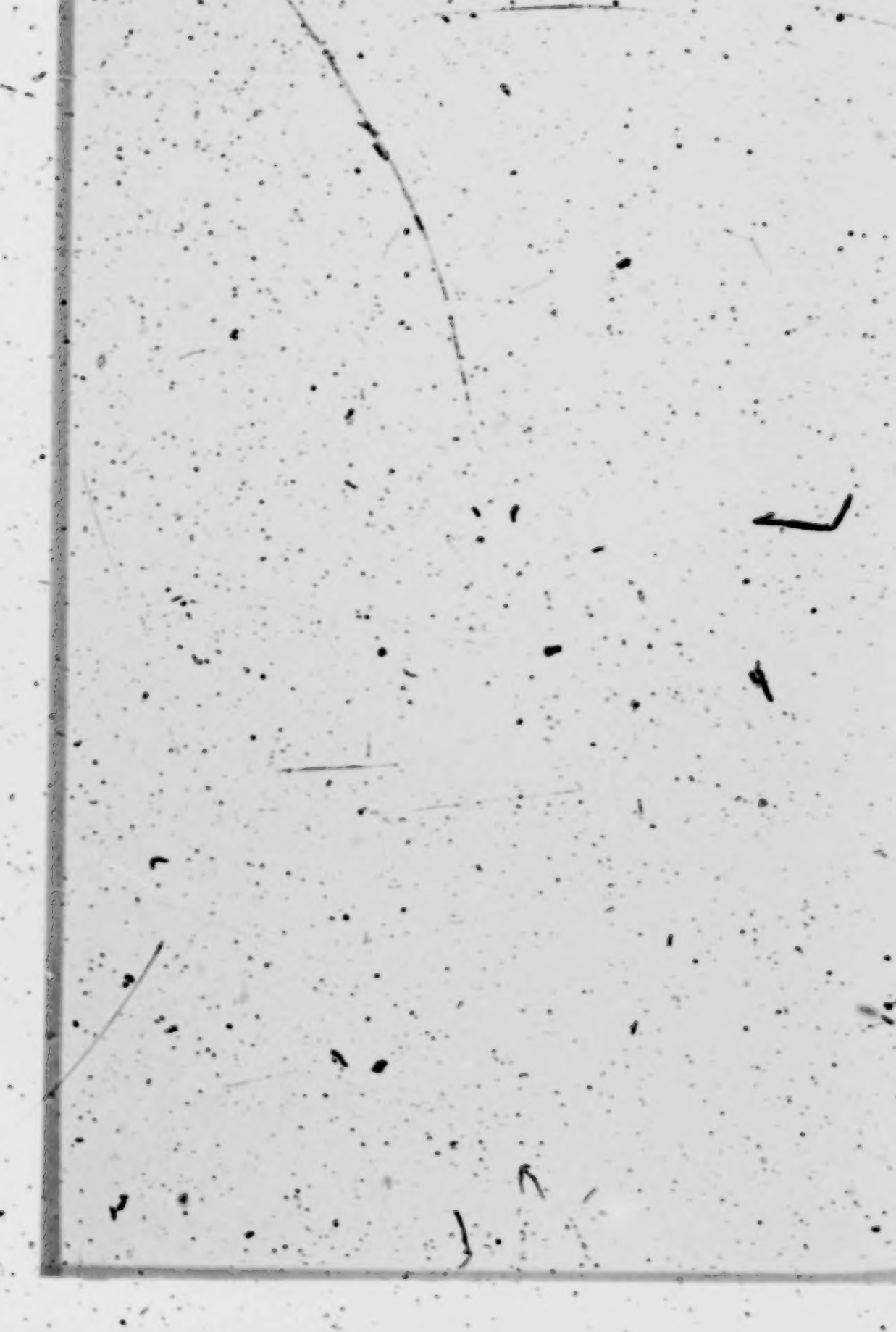

INDEX

	Page
Statement of the Case	1-4
Argument	
Reasons for Denying the Writ	
1. The Court Should Refuse to Review the Adequacy of the Evidence Supporting the Orders of the District Court.	5-7
2. The Rulings Below Were Consistent, Rather Than in Conflict, with this Court's Decisions.	7-11
Conclusion	12
Certificate of Service	13
Appendix —	
Order Approving Interim Desegregation Plan for Dade County Public Schools — dated August 29, 1969	1-6
Excerpts from testimony of Edward L. Whigham (February 2, 1970)	7-10
Excerpts from minutes of Dade County School Board meeting of May 19, 1971 — filed May 26, 1971	11-12
Excerpt from Report of the Dade County School Board to the United States District Court — dated November 10, 1971	13-24

TABLE OF AUTHORITIES

CASES

Page

Davis v. School Commissioners of Mobile County, 402 U.S. 33, 28 L.Ed.2d 577 (1971) 5, 7, 8, 9

Davis v. School Commissioners of Mobile County, 430 F.2d 883 (5th Cir. 1970) 10

General Talking Pictures Corporation v. Western Electric Company, 304 U.S. 175, 178 (1938) 6

Green v. County School Board of New Kent County, 391 U.S. 430, 20 L.Ed.2d 716 (1968) 2, 3, 10

N.L.R.B. v. Amalgamated Clothing Workers of America, 430 F.2d 966 (5th Cir. 1970) 4

Pate v. Dade County School Board, 434 F.2d 1151 (5th Cir. 1970), cert. denied, 402 U.S. 953, 28 L.Ed.2d 123 (1971) 3, 10

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 28 L.Ed.2d 554 (1971) 4, 5, 6, 7, 8, 9, 11, 12

OTHER AUTHORITIES

Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States*, at p. 558 6

in the

Supreme Court

of the

United States

OCTOBER TERM, 1971

No. 71-918

ALICE LOVE, et al,

Petitioner,

vs.

DADE COUNTY SCHOOL BOARD, et al,

Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

The petitioners' statement of the case does not adequately reflect the flavor or history of this litigation, as the context for the points now being urged as grounds for the exercise of this Court's discretionary jurisdiction. Without attempting a complete restatement, we offer the following as background and supplement.

The litigation began in 1969 by the filing of a suit against the respondent School Board by a citizen named

Pate, who sought to enjoin the Board from implementing a desegregation plan it had approved for the 1969-1970 school year. The School Board invoked federal jurisdiction over its desegregation efforts by removing the case to the U.S. District Court for the Southern District of Florida. The Board had previously, over a period of approximately ten years, and not under judicial compulsion, taken various measures at a moderate rate to desegregate the Dade County public schools. This history was succinctly reviewed by the District Judge in his first order approving the Board's plan on an interim basis (Appendix 1-6) and further developed in testimony later (Appendix 7-10).

This first plan was recognized by the District Judge as not adequate to meet constitutional standards, and was approved as an interim measure only, with directions for immediate further planning to accomplish a unitary school system. The case progressed through a labyrinth of proceedings including testimony, plans and modifications submitted by the Board, and a number of orders entered by the District Judge desegregating the Dade County public schools in various respects. Finally, in June and July, 1970 the District Court entered orders reviewing a final desegregation plan filed by the Board. The District Judge, while finding that the plan reflected "a substantial effort, made in good faith, to create a unitary school system", held it not yet sufficient, and therefore directed a great many modifications, and declared the plan, as so modified, to constitute a unitary system of public education for Dade County.

On appeal, the Court of Appeals for the Fifth Circuit measured the Board's plan, as modified by the District Court, against the six criteria established by this Court in *Green v. County School Board of New Kent County*, 391

U.S. 430, 20 L.Ed. 2d 716 (1968), and in an exhaustive opinion required extensive further modifications, but only to the student assignment elements of the plan. The other five criteria set forth in *Green* were found to have been met, and the Court of Appeals therefore held that the total plan as modified by its decision would effectively desegregate the Dade County school system. *Pate v. Dade County School Board*, 434 F.2d 1151 (5th Cir. 1970), *cert. denied*, 402 U.S. 953, 28 L.Ed. 2d 123 (1971). (The orders of the District Court referred to above are reprinted in full as appendices to the report of the decision of the Court of Appeals.)

The School Board applied to this Court for review on certiorari, complaining of the summary disposition of the case by the Fifth Circuit, and of the massive extent of the rezoning, pairing and grouping required, which in turn necessarily required extensive additional busing.[1]

This Court denied certiorari on May 4, 1971, and on May 26, 1971 the Board filed with the District Court its 1971-1972 Pupil Assignment Plan, which (as petitioners concede) affirmatively moved to reduce predominantly black enrollment in certain schools. The Board in approving this plan, although its school system had been held fully to meet constitutional standards, further authorized additional busing, and looked to the purchase of still more buses for future desegregation steps, as budget resources would permit (Appendix 11-12). The Board has since continued its planning and efforts for improvements in the county school system, as will be pointed out later in the Argument portion of this brief.

[1] Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, filed in *Dade County School Board v. Herbert Pate*, case No. 936, October Term, 1970.

At this juncture, certiorari having been denied by this Court, and *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28 L.Ed. 2d 554 (1971) and its companion cases having been decided in April, the District Judge entered his order of June 14, 1971, recognizing his continuing responsibility to assure that the school system did not revert to dual status, and giving all parties an opportunity to object to the Board's 1971-1972 Pupil Assignment Plan (Pet. Appendix 1a). The petitioners at this point first objected to the Plan, and then sought to reopen the entire case for evidentiary hearings *de novo* "to determine whether or not the Dade County school system is unitary": The District Court approved the Board's plan, and on June 30, 1971, after considering the petitioners' contentions in the light of the *Swann* opinion, the Court concluded that no new evidentiary hearings were required and denied the motion (Pet. appendix 8a).

Petitioners appealed, making the same arguments to the Court of Appeals as are now offered to this Court. After a month of consideration upon full briefs, the Court of Appeals affirmed without opinion, referring to its Local Rule 21,[2] and to its explication of that Rule in *N.L.R.B. v. Amalgamated Clothing Workers of America*, 430 F.2d 966 (5th Cir. 1970).[3]

[2]Rule 21 provides: "When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion."

[3]This case is incorrectly cited in petitioners' appendix. It shows the caution observed by the Fifth Circuit in employing this local rule to affirm without opinion.

ARGUMENT

REASONS FOR DENYING THE WRIT

1. The Court Should Refuse To Review The Adequacy Of The Evidence Supporting The Orders Of The District Court.

Both the District Judge, who had lived with this case for two years, and the Fifth Circuit, certainly the most experienced Court of Appeals in the nation in desegregation cases, have held the Dade County school system effectively desegregated, after monumental efforts by all concerned with the matter since 1969. Furthermore, the orders of the District Court now attacked by petitioners, were entered in full light and after careful consideration of this Court's decisions in *Swann v. Charlotte-Mecklenburg Board of Education, supra* and *Davis v. School Commissioners of Mobile County*, 402 U.S. 33, 28 L.Ed. 2d 577 (1971).

Petitioners now, in attempting to force a reopening of the case, are in actuality asserting that the District Court's order of June 30, 1971, holding that respondent's school system is unitary under the guidelines laid down in *Swann*, is not supported by the evidence. The issue correctly stated, then, is whether the conclusion of the District Court is supported by substantial evidence.

Petitioners focus on the language in *Swann* indicating a "presumption against schools that are substantially disproportionate in their racial composition", and argue that neither of the courts below addressed itself to the issue. This argument simply overlooks the plain terms of the District Court's order of June 30, 1971. There can be no

doubt that the District Court did consider *Swann*, and it is clear that the District Court's denial of petitioners' motion for an evidentiary hearing *de novo* was an adjudication that in the light of the *Swann* case, the respondent had sustained its burden of proof. Thus, the question is nothing more than whether the evidence was sufficient to justify the conclusion of the court. There can be no doubt that under the precedents of this Court, certiorari will not be granted "merely to review the evidence or inferences drawn from it." See *General Talking Pictures Corporation v. Western Electric Company*, 304 U.S. 175, 178, 82 L.Ed. 1273 (1938) and cases cited. See also Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States*, at p. 558. Petitioners would have this Court review hundreds of pages of testimony and exhibit piled upon exhibit to determine whether this mass of evidence contains substantial justification for the considered opinion of a trial court that the respondent had satisfied its burden of proof; that is, the burden of justifying the continued existence of some one-race schools in Dade County and the fact that approximately 24% of the black students in the county would attend black or substantially all-black schools during the 1971-1972 school year. Petitioners ask this Court to substitute the petitioners' evaluation of the evidence for that of the District Court.

A school desegregation case presents a particularly inappropriate instance for Supreme Court review of a trial court's evidentiary determination. This Court recognized in *Swann* that in determining the constitutionality of pupil assignment plans "... we must of necessity rely to a large extent, as this court has for more than 16 years, on the informed judgment of the district courts in the first instance and on courts of appeal." Secondly, the thrust of

this Court's decisions since *Brown I* has been to place primary responsibility on the district courts to fashion equitable remedies, that discretion being limited by the decisional guidelines laid down by this court in such cases as *Swann*. Where, as here, a district court has explored with great thoroughness the possibilities in a particular community for providing desegregated public education and has adopted a complex plan for the operation of a large public school system in a unitary manner, and has held such plan to be consistent with a school board's obligations under the law of the land as most recently stated in the *Swann* case, an application to review the adequacy of the evidence to support the trial court's conclusions, particularly where such court's findings have been completely affirmed by a court of appeals, should not be entertained. It was the function of the Fifth Circuit to review the sufficiency of the evidence, and by its affirmance that court obviously held that the District Court's orders were supported by substantial evidence.

2. The Rulings Below Were Consistent, Rather Than In Conflict, With This Court's Decisions.

We address ourselves now to the alleged "conflict" upon which petitioners seek to invoke the jurisdiction of this Court. As we read the opinions in *Swann* and *Davis*, *supra*, the essence of the cases is the Court's delineation of *permissible* remedial techniques available to the district courts, as part of their traditional equity jurisdition, *after* local school authorities have demonstrably failed in their affirmative obligations to establish a unitary system eliminating racial discrimination. The Court in *Swann* made it very clear that judicial authority "enters only when local authority defaults", and then outlined the range of tools available to the lower courts as corrective devices.

The implicit theory of petitioners' argument is that since non-contiguous zoning, cross-busing, and other remedial techniques may be used by the district courts, therefore they *should* be used — and therefore they *must* be used. It is a doctrinaire, unspoken and specious form of reasoning, which then enables petitioners to claim that since the lower courts in this case did not employ every tool in the kit, their judgments with respect to the unitary character of the Dade County school system must perforce be in "conflict" with this Court's decisions in *Swann* and *Davis*. If petitioners are correct, then the flexibility and breadth of powers in the district courts which have so often been stressed by this Court are made illusory. Instead of being able to cope in differing and innovative ways with the manifold problems of desegregating school systems in different areas, the district courts would be frozen into a checklist procedure of using every weapon in the desegregation arsenal, regardless of local conditions, residential patterns, educational values, or any other factor of local significance. This cannot be what the Constitution commands, or what this Court intends.

The differences between the situations in *Swann* and *Davis*, and the posture of the case at bar, are many and obvious. *Swann* dealt with a recalcitrant school board which had persistently refused to accept its obligations to disestablish a dual school system, and whose elementary school plan had finally to be mandated by the district court. There was no holding that the Charlotte-Mecklenburg board had achieved a unitary system; rather, the judgment of the district court was the reverse. Thus, the court was required to use its equitable powers to fashion a suitable remedy for past wrongs.

As has been shown, the Dade County School Board on its own initiative undertook the task of desegregating its schools long before this litigation began. The Board itself invoked the jurisdiction of the federal courts to protect and aid this effort, and made good faith and substantial efforts to cooperate and comply with the evolving requirements of law in respect to faculty desegregation, majority-to-minority transfers, and other criteria developed by this Court and the Fifth Circuit. The Board's desegregation plan, after modifications by both courts below, was held effective to desegregate the Dade County school system. Indeed, the Board has not been content to rest upon its unitary status even after the latest decisions in its favor, but has continued to work with the Bi-Racial Committee appointed by the District Court, and has created a new department and staff, headed by a district superintendent, especially for the purpose of developing and implementing long-range further desegregation actions.[4]

The point here is, in contrast to the situation in *Swann*, that at the time of the hearings upon petitioners' motion for *de novo* proceedings, there remained with the District Court only the duty to determine if the Board's 1971-1972 Pupil Assignment Plan showed reversion to or toward a state-imposed dual school system. In finding that the motion was without merit, the District Judge as well as the Court of Appeals, had the full benefit of this Court's opinions in *Swann* and *Davis*, coupled with the intimate familiarity of both lower courts with the details and problems of this school system.

[4]Report to Court (November 10, 1971). This was a comprehensive status report on the school system filed in compliance with directions of the District Court. Petitioners used statistics from the report in their appendix. We therefore feel free to reprint in the appendix to this brief the portion showing the establishment and functions of the Board's new desegregation office and staff (Appendix 13-24).

Petitioners attempt to avoid the clear purport of the rulings below by means of two themes. The first consists of their assertion that the Court of Appeals, in its August, 1970 *Pate* decision modifying and approving the Dade County desegregation plan, "explicitly relied" upon its decision in *Davis v. School Commissioners of Mobile County*, 430 F.2d 883 (5th Cir. 1970), which was later reversed by this Court in its decision accompanying the *Swann* case. There are several answers to this. First, it is clear that the Court of Appeals in its *Pate* opinion[5] only referred to its *Davis* decision, among others, as showing the *approach* the court has formulated in reviewing desegregation plans — that is, to measure any given plan against the six criteria set forth in *Green v. County School Board of New Kent County, supra.* The opinion nowhere else refers to the *Davis* case. Secondly, the *Pate* opinion does not speak in terms of the "neighborhood school"; and petitioners' statements that the Fifth Circuit was governed by that concept are only speculation. Finally, when one turns to this Court's decision in *Davis*, it is pretty clear that the Court was concerned with the peculiar geographic division of the races in Mobile, and reversed the Court of Appeals because it had felt constrained to treat the two segments of the system in isolation, resulting in a very high percentage of all-Negro or nearly all-Negro schools. No such split in geographical race location appears in Dade County, and no such easy solution to the problem of one-race schools as simply busing students east-west across a dividing highway.

---

[5]See *Pate v. Dade County School Board*, 434 F.2d 1151, 1152 (5th Cir. 1970).

Petitioners' second theme concerns the continued existence of some remaining schools containing all or predominantly one race. We disagree first with their rather extravagant statement that the entire school system is "presumed unconstitutional" by this fact alone. The Court in *Swann* enjoins close scrutiny of such schools, raises a presumption against their continued existence, and places the burden on school authorities to show that assignments involving such schools are genuinely non-discriminatory. But *Swann* very clearly refused to say that mathematical racial balancing is a matter of substantive constitutional right, and just as clearly did say that the existence of some small number of racially disproportionate schools is *not* in and of itself the mark of a system practicing segregation by law.

We next point out that in the past two years, through the combined efforts of the School Board and the lower courts, the percentage of black enrollment remaining in substantially all-black schools (85%-100%) has been cut by over half —from 58% to 23% — as the petition itself discloses. Only 15 of 218 schools remain predominantly all-black, and there is no warrant for petitioners' asssumption that this will continue indefinitely. If anything, the Board's continued efforts beyond the strict limits of its approved system as now operating indicate that racially disproportionate schools will continue to be reduced. In any event, the remaining disproportionate schools have clearly survived the judicial scrutiny of the District Court and the Court of Appeals, in the light of *Swann*, and those courts retain jurisdiction to review further actions of the Board.

CONCLUSION

The District Court and the Court of Appeals have both evaluated petitioners' contentions and have rejected them, with full advantage of the *Swann* guidelines and with comprehensive knowledge of this large and complex school system, its history and its progress. Petitioners have made no showing of real conflict as a basis for review on certiorari, and the petition should be denied.

Respectfully submitted,

FRANK A. HOWARD, JR.
1410 N.E. Second Avenue
Miami, Florida 33132
Attorney for Respondent

JAMES T. SCHOENBROD
1410 N.E. Second Avenue
Miami, Florida 33132
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing Brief in Opposition to Petition for Writ of Certiorari have been served upon all parties required to be served, service having been effected by mail, in accordance with paragraph 1 of Rule 33 of the Rules of the Supreme Court of the United States, to the following named attorneys of record, on the 16th day of March, 1972.

FRANK A. HOWARD, JR.
1410 N.E. Second Avenue
Miami, Florida 33132

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN J. CHACHKIN
DREW S. DAYS, III
10 Columbus Circle
New York, New York 10019

CHARLES MINER
State Board of Education
Tallahassee, Florida 32304

JAMES W. MATTHEWS
5022 N. W. Seventh Avenue
Miami, Florida 33127

FRED DAVANT
Wicker, Smith, Pyszka,
Blomqvist & Davant
Biscayne Building
Miami, Florida 33130

IRMA ROBBINS FEDER
RICHARD YALE FEDER
11th Floor, Roberts Building
28 West Flagler Street
Miami, Florida 33130

TOBIAS SIMON
1492 S. Miami Avenue
Miami, Florida 33130

APPENDIX

[TITLE OMITTED]

ORDER APPROVING INTERIM DESEGREGATION PLAN FOR DADE COUNTY PUBLIC SCHOOLS

In 1956, following the landmark school integration cases of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), a lawsuit was filed in the United States District Court in the Southern District of Florida. The case was styled *Gibson* v. *Dade County School Board* and sought to effect the integration of the Dade County schools. On March 17, 1960 United States District Judge Joseph P. Lieb entered an order providing for the implementation of a freedom of choice plan in the schools. This order also stated

> "It is further ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction of this cause for such time as may be necessary to put the plan herein provided into operation and for determination as to whether further proceedings are necessary."

From the time of the entry of this order to the present this case has laid dormant. In the interim the integration of the Dade County School System has proceeded at a moderate rate. At the close of the 1968-69 school year there were 42 all negro schools in the system out of a total of 217 schools. On July 1, 1969 the Department of Health, Education & Welfare, charged by Congress in Title 42 U.S.C. §2000 with administering federal funds to aid public education and to assist in the process of desegregating public schools, notified the Dade County School System that it was not in substantial compliance with Title VI of

the 1964 Civil Rights Act which concerns desegregation. At the time of the notification HEW stated:

> "It is expected that the Dade School System will develop and implement a plan which will eliminate the dual school structure in the system by no later than September 1970 and that those steps toward that end which are administratively feasible will be taken by September 1969."

In accordance with this direction the school board obtained the services of the Florida School Desegregation Consulting Center, a federally funded center at the University of Miami, The Center studied the Dade System for approximately 1 month and on July 23, 1969 submitted an Interim Desegregation Plan for the 1969-70 school year. The School Board approved this plan on July 25 with two changes. The rejected the recommendation that there be pairing of two groups of elementary schools in South Dade County and they eliminated the all black Mays Junior-Senior High School. The revised interim plan was approved by HEW on August 4 pending receipt of a final plan by February 1, 1970.

At this point the school system began making preparations to operate under the revised interim plan for the 1969-70 school year. Certain portions of the plan met with public opposition as did certain steps taken to implement the plan. This opposition culminated in the filing of several lawsuits in the Eleventh Judicial Circuit of the State of Florida. The various plaintiffs were the parents of school children in the Dade system and the defendants were uniformly the Dade County School Board. The first of these suits attacked the Board's action with regard to the elimination of the all black Mays school. It is styled *Pate v. Dade County School Board.* The Board's action

was alleged to be arbitrary and capricious and also as taken in violation of Florida Statute 286.011, known as the "government in the sunshine law." This law requires that any official action taken by an agency of the State of Florida be taken in public proceedings and that a written record of such procedings be made. The school board petitioned this Court for removal of the Pate case on August 25, 1969, alleging that the case was one of exclusive federal jurisdiction. At 8:30 a.m. on August 27, the court heard a motion to remand and under the doctrine of *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1963) remitted the case to the State Court for determination of state law issues and retained jurisdiction of the case for determination of any federal questions. At 9:00 p.m. on August 27, Circuit Judge David Popper entered a temporary injunction restraining the School Board from implementing its plan of July 25 as it related to Mays School. The basis of the injunction was Judge Popper's finding that the "government in the sunshine law" had been violated and that the action of the School Board in regard to Mays was void. The effect of this ruling was to require Mays to open as an all black school for the school year 1969-70.

At 3:30 p.m. on August 27, the Court considered the request of the School Board that the Court exercise jurisdiction in the Pate case. Based on the effect of the State Court's ruling, which negated the immediate elimination of an all black school, this Court accepted jurisdiction. Other factors which dictated the exercise of jurisdiction were the issuance of another injunction negating a separate portion of the Board plan and the fact that eventually under the State Court ruling, all action taken by the Board on July 25, when the plan was approved, would be held void as being in violation of the sunshine law. The State

Court injunctions, of course, ran only in favor of the particular plaintiffs before that court. The forseeable result was that after sufficient plaintiffs came before the State Court the entire plan would be voided. The voiding of an interim plan providing for more integration is unquestionably a question for the Federal Courts. Finally, reiterating the last order in Gibson — this court retained jurisdiction over the Dade County School System for the purpose of supervising its desegregation.

The case of Pardo v. Dade County School Board has been removed from the State Court to this Court. The case of Frank v. Dade County School Board haas been filed in this court. Both of these cases concern attacks on aspects of the interim plan and it is ORDERED that they be consolidated with the Pate case in accordance with oral rulings made this morning. It is further ordered that petitions to intervene on the said of the plaintiffs Filed by *Webb, et al., Rosen, et al., Wolff, et al., Eagle, et al.,* and *Reiter, et al.,* as parents of children attending Dade public schools are all granted. IT IS FURTHER ORDERED that petitions to intervene on the side of the defendants filed by the *Dade County Classroom Teachers Association* and *Love, et al.,* are granted.

At this point, after two days of testimony and argument, eighty-four hours before the seventh largest school system in the United States is due to open, this Court must approve a desegregation plan under which this system is to be operated for the 1969-70 school year. This plan must

[1]By virtue of the order of the Acting Chief Judge of the Southern District of Florida, William O. Mehrtens, the case of Gibson v. Board of Public Instruction of Dade County, Florida is transferred to this division and consolidated with the case of Pate v. Dade County School Board Presently in this division.

be formulated in accordance with the Constitutional standards delineated by the Supreme Court and the Fifth Circuit Court of Appeals. In devising such a plan the Court is confronted with a dilemma. It is clear from *Green v. County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968), the most recent *United State of America v. Jefferson County Board of Education et al.*, ____ F.2d ____, (No. 27444, June 26, 1969, 5th Cir.) decision, and numerous other Fifth Circuit decisions that the time for desegregation is now, that delays are no longer tolerable. The case of *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968) clearly states "If in a school district there are still all-Negro schools . . . the existing plan fails to meet constitutional standards as established in Green." The only comprehensive plan before the Court is the previously discussed school board Interim Plan for the school year 1969-70. Regrettably, this plan contemplates the operation of 38 all-black schools. Regardless of HEW's approval the plan does not meet Constitutional standards. The Court gave careful consideration the the alternative plans but their implementation, if Constitutional, was not feasible and would impair the operation of the Interim Plan.

At this eleventh hour a balance must be struck. To require immediate desegration of all schools in Dade County would result in chaos. It is therefore the order of this Court that the Interim Plan for desegregation approved by the Dade County School Board at its July 25th meeting for the 1969-70 school year is, in all respects, adopted and approved by this Court. *United States of America v. The Board of Education of Baldwin County, Georgia, et al.*, ____ F.2d ____ (No. 27281, 5th Cir., July 9, 1969). This plan now being the order of this court all persons are enjoined from attack upon or interference in

any way with the operation of such except by appellate review. The School Board is directed to furnish to this Court within 30 days the results of a study delineating the administrative feasibility of total disestablishment of a dual school system at the elementary and junior high levels at the beginning of the second semester of the 1969-70 school year. Such study shall also include the following criteria:

(1) maximum utilization of school buildings; (2) density of population; (3) proximity of pupils to schools; (4) natural boundaries; and (5) Welfare of students.

Henry v. Clarksdale Municipal Separate School District, et al., — F.2d —, (No. 23255, 5th Cir., March 6, 1969).

The Board is also directed to furnish by March 1, 1970 a plan to eliminate the dual school structure in grades 10-12 by no later than September 1, 1970. The Court approves the collaberation of the School Board with the Florida Desegregation Consulting Center and the United States Department of Health, Education and Welfare and directs that the continuing cooperation of these agencies be sought in complying with the court's order.

The Court retains jurisdiction of this cause for the entry of such further orders that may be necessary.

ENTERED This 29th day of August, 1969 at 6:00 p.m. at Miami, Florida.

s/ C. CLYDE ATKINS

United States District Judge

EXCERPTS FROM TESTIMONY OF EDWARD L. WHIGHAM (February 2, 1970)

EDWARD L. WHIGHAM

called as a witness on behalf of the defendant Dade County School Board, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name and address:

THE WITNESS: Edward L. Whigham, 1410 Northeast Second Avenue.

DIRECT EXAMINATION

BY MR. BOLLES:

Q. What position do you occupy in the Dade County Schools, Doctor?

A. Superintendent of Schools.

Q. And I believe in a previous appearance before this Court you have established how long you have been with the school system and what your qualifications are as an educator?

A. Yes, I have.

Q. Dr. Whigham, I would like to ask you to state what the School Board has done with regard to desegregation commencing in 1959?

A. If I remember those dates correctly, there was a suit here in Dade County, I believe the decision was in December of '58, which declared that section of the Florida Constitution which required separate schools by race to be unconstitutional. It was either the latter part of '58 or the first part of '59.

Several months later, the School Board decided to admit some black children to what had been a white

school. In that fall the school system opened with two schools enrolling black youngsters, two schools that had formerly been white schools.

And then, in the years since, there has been an increase in the number of students in desegregated schools. There has gradually been an increase, this would be a decade, in this decade from '59 to '69.

Q. And can you tell the Court, upon opening the schools in September of 1961, how many schools had been integrated?

A. In '61, I believe, when school opened, in '61, there were five schools that were designated as desegregated. Then additional ones admitted youngsters of the other race during that year; four I believe, to be exact.

Q. Now, do you have —

A. No, no, no. I believe my figure is wrong here. I am thinking of the wrong year. In '61 is your question?

Q. Yes, sir.

A. There were 9 in the fall and there were 5 more during the year, which brought it up to 14.

Q. Now, in 1962 in the fall, how many schools were integrated?

A. The school system reported 17 that year.

Q. And in 1963?

A. 28.

Q. And in October of 1963 how many schools had been desegregated?

A. 42.

Q. Now, for the fall of 1964, state how many schools and staffs had been desegregated.

A. In '64 the school system was reporting 51 schools as desegregated and 9 teaching staffs.

Q. Now, had HEW or any governmental agency made a study of our school system at that time?

A. No, they had not made a study of our school system. As a matter of fact, they did not make a study of our school system until 1969.

Q. Then the opening of schools in 1964 with this amount of desegregation accomplished was done with or without prodding from HEW or other governmental sources?

A. Well, in '64 that's right, because it wasn't until that year that the Civil Rights Act was enacted; yes, sir.

Q. All right sir. Skipping down to the opening of school in 1968 and 1969, how many children were enrolled in the public schools in that school year?

A. 1968-69 — something over 230,000.

Q. and do you recall how many were black and how many were white?

A. I have it noted here. The actual number was a total of 232,272. For the whites it was 175,801 and your blacks 56,471.

Q. And how many schools had a biracial composition at that time?

A. The school system was reporting 134 in that year.

Q. And please state how many all black high schools there were in 1963.

A. In 1963 I believe there were 5, Mr. Bolles.

Q. Now, how many all black high schools are there in the school system today?

A. By all black, I am assuming you mean totally, all the student body is black?

Q. Yes, sir.

A. One that we consider in that category.

Q. Now, what happened to the other four schools — four high schools?

A. These schools were junior-senior high schools — you are speaking of the five high schools in '63?

Q. Yes, sir.

A. Those schools were junior-senior high schools. The senior high student body were merged into other high schools on an integrated basis and the schools were maintained as junior high schools. Of those — let me see if I can get my numbers straight — four of them that were done in this manner, one was done last year as a part of our interim desegregation plan when the Mays Senior High School students were moved to South Dade, and the junior high was integrated.

The plan we had under consideration would complete the desegregation of the remaining junior highs that were part of those four junior-senior high schools that you referred to in '63.

Q. Now, Dr. Whigham, what is the School Board's position with regard to desegregation?

A. I think the School Board's position now is that they recognize the responsibility to desegregate the school system, to establish a unitary school system, and it recognizes the responsibility to desegregate its staff in accordance with the order of this Court, so that this staff is not, so to speak, racially identifiable staff, or so that the schools are not racially identifiable by their staffs.

EXCERPTS FROM MINUTES OF DADE COUNTY SCHOOL BOARD MEETING OF MAY 19, 1971 — FILED MAY 26, 1971

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I HEREBY CERTIFY that the following is a true and correct copy of action taken by the Dade County School Board at its meeting of May 19, 1971, as appears of record in the minutes of said Dade County School Board:

1. The Board approve for submission to the federal courts as the school boundaries for 1971-72 the attendance zone plan adopted by the Board on February 17, 1971, and modified later for the Vineland-Leewood-Martin-Coral Reef-Palmetto-Howard Drive Elementary Schools and for Coral Gables-Carver-Merrick-Sunset Elementary Schools.

2. The Board authorize the operation of shuttle bus service between the following schools, to commence in the fall of 1971, if sufficient bus services can be made available for that purpose and the required funds can be budgeted:

Lorah Park-Curtis Elementary Schools

Bel-Aire-Perrine-Moton Elementary Schools

Hialeah-Gladeview Elementary Schools

Douglas-Riverside Elementary Schools

3. The Board authorize its attorney to submit its approved attendance plan to the federal district court and pursue litigation directed to final federal judicial decision on establishment of a unitary system in the Dade County Public Schools.

4. The Board, in adopting the 1971-72 school system budget, give consideration to authorizing, if budget resources in a critical year permit, additional busses as required by further steps in desegregation which may be authorized by the Board.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 26th day of May, A.D. 1971.

s/ Constance A. MacMurray

CONSTANCE A. MACMURRAY
Recording Secretary of the
Dade County School Board

SEAL

EXCERPT FROM REPORT OF THE DADE COUNTY SCHOOL BOARD TO THE UNITED STATES DISTRICT COURT — DATED DECEMBER 10, 1971

The Biracial Advisory Committee, consisting of fourteen members, appointed by Judge C. Clyde Atkins, United States District Court, has presented two reports to the School Board: (1) Preliminary Report dated December 7, 1970, and (2) Summary of Priority Concerns with Suggestions dated May 17, 1971.

The May 17, 1971, summary reflected the observations of the members of the Committee since September 1970 and also reemphasized their concerns and recommendations that were previously stated in the December 7, 1970, report.

The following suggestions were offered by the Biracial Committee for consideration of the School Board and the School Administration:

1. To make an all-out commitment of the School Board and the School Administration to the goals of a unitary school system and the desegregation of the schools. This implies even greater involvement of the School Board and the top School Administration within the schools and with parental/community groups throughout the County.

2. To make it known throughout the County School System by every communicative means available that the human and study/working relations have the highest priority in the system.

3. To request an overall and comprehensive philosophy and plan from an appointed joint commission of school people and perhaps student and parental representation under a newly established Deputy or Assistant Superintendent of Schools for Human Resources. This plan should contain means of evaluating, changing and upgrading as necessary, the approach, the procedures and results of: recruiting and selection of new teachers; retraining of administrators and tenured teachers; position relocation and status change to ineffective administrators and teachers; inservice training programs and intensive school faculty/emergency training and development; teacher training (university) and internships; grievance and disciplinary policies, procedures and organization.

4. To establish the position of a Deputy or Assistant Superintendent of Public Instruction for Human Resources with the responsibility of the developing and coordinating of comprehensive plans and implementing procedures to improve the present state of human affairs in our schools.

5. To strengthen the present Human Relations Team by providing additional personnel and funding regardless of availability of federal monies; a change of procedures making it possible for them to influence policy, recommend programs and procedures in schools to assist school people to meet successfully and even capitalize on the human problems of a tri-cultural and multi-ethnic community.

6. To initiate a request to the County Manager to formalize the close liaison and planning of the County and the Schools, especially as it relates to housing, transportation, and parks and school site selection and land usage.

7. To establish a reporting pattern which reflects the tricultural potential of each each school and each district to include student population, teacher-administrative population and any related and special instructional considerations or capabilities.

8. To compensate for any loss of intramural and nonclass activities occurring as a result of split and staggered sessions and reorganization of the school year.

9. To clarify the policy of the regional and national office administering desegregation funds to the effect that Biracial Committees are not in a position to monitor or to approve expenditures.

The School Board and the School Administration have given serious consideration to the above recommendations of the Biracial Committee. In order to implement these recommendations, the School Board established an Office for School Desegregation Planning and Implementation administered by a District Superintendent. This office has been charged with the responsibility to develop a long-range, comprehensive plan for further desegregation of the schools which will assist the School Administration and the School Board in bringing stability to those school centers already desegregated and in maintaining the "unitary school system" status as it has been recognized by the Courts.

It should be noted in the description of the office (see attached) that the specific responsibilities assigned include most of the recommendations of the Biracial Committee.

In addition, the Superintendent of Schools has initiated a request to the County Manager to explore the idea of formalizing a close liaison and planning of the County and the Schools. He has also set up, reviewed and established procedures for reporting and reducing incidents within the schools.

The Division of Instruction plans to conduct a Spanish Language Origin Survey. Information retrieved by this survey will be used principally for the allocation of special staff and material funds, but can serve other purposes.

The heavy demands on transportation make it difficult to give priority to the recommendation to compensate for the loss of intramural and nonclass activities occurring as a result of split and staggered sessions and reorganization of the school year.

We concur with the Biracial Committee that it is difficult to monitor and approve expenditures such as ESAP funds. An effort will be made to keep the Committee informed concerning projects designated to assist in the desegregation process.

OFFICE FOR SCHOOL DESEGREGATION PLANNING AND IMPLEMENTATION

I. Rationale for the Establishment of the Office

Over the last several years, the Dade County School System has moved toward desegregation both on its own initiative and more recently under a series of court orders.

The major moves of the past two years have required the intensive effort of all administrators, plus the involvement and personal dedication to this cause by the School Board, teachers, and other personnel, to effect the required changes.

As a result of these efforts, the federal district court has recognized the Dade County Public Schools as a unitary school system under constitutional mandates.

This decision by the courts, however, does not mean that the issues and problems accompanying the process of desegregation can now be forgotten. There is yet much to be done in the way of critical planning and development of policies, procedures, and programs to bring stability to those schools already desegregated, and to improve further the school system's desegregation status.

County and district administrative staffs have been strained to the point where it is impossible for them to devote the extended periods of time required to undertake the comprehensive planning and implementation activities necessary for furthering the school system's desegregation efforts. Recognizing the need to have this planning and implementation undertaken immediately, the School Board

on July 21, 1971, authorized the establishment of an Office for School Desegregation Planning and Implementation and the appointment of a district superintendent on special assignment to administer the office.

II. Administration of the Office

This office is administered by a district superintendent on special assignment with three support staff members and two clerical staff members.

The district superintendent is responsible directly to the superintendent of schools and is held responsible for county-wide planning and review of the effectiveness of district and school activities in areas related specifically to school desegregation.

It is essential that a close working relationship exist between the Office for School Desegregation and the various district and county administrative offices. The functions of the office do not abrogate the authority and responsibility of the superintendents of the six geographic districts and other county administrative personnel. It remains their responsibility to exert leadership, direction and control for planning activities and full implementation of all School Board policies and regulations concerning desegregation, human and community relations within their districts and departments.

III. Functions of the Office

This office is responsible for the development of a comprehensive long-range desegregation plan for the Dade County Schools which will assist the school administration

and School Board in bringing stability to those school centers already desegregated and in maintaining the "unitary school system" status as it has been recognized by the courts. To do this will require activities as follows:

A. Planning for Specific Actions and Recommendations

The prime function of this office will be the development of a long-range comprehensive desegregation plan for the county. This plan will be comprised of a number of specific actions and recommendations in several interrelated areas which need consideration. This planning shall result in practical and sound procedures for desegregation which can be implemented and maintained through sound administrative practices. Some of these areas are:

1. Attendance Boundaries

   a. Establish guidelines for and direct planning activities of district and central office personnel in establishing attendance boundaries that will be in harmony with a comprehensive desegregation plan.

   b. Consult with appropriate administrative personnel in order to analyze all costs associated with proposed boundary line changes such as transportation required.

   c. Consult with community groups including the Biracial Committee to obtain reactions to proposed boundary line changes.

   d. Review districts' plans and recommend to Superintendent changes in school boundaries.

2. Sites for Future Centers

   a. Review all plans and recommendations for the selection of sites for future school centers to determine if such plans are in accord with overall desegregation plans.

   b. Determine guidelines for the replacement of schools as they become obsolete or in need of extensive maintenance.

   c. Review all plant utilization proposals to determine if they are in harmony with overall county desegregation plans.

3. School Pairings and Groupings

   a. Analyze problems associated with paired and grouped schools to determine what assistance or additional planning, if any, is needed.

   b. Determine which pairing or grouping patterns have special merit for consideration in future desegregation planning.

4. Funding for Desegregation

   a. Study local, state and federal costs involved in the desegregation process.

   b. Work closely with departments of finance and special programs to keep informed and to take advantage of additional sources of funds.

   c. Make recommendations as to reallocation of existing resources—local, state and federal.

d. Review all proposals for requests of funds to support desegregation to determine if the requests include support for staffing, facilities, transportation, materials, equipment or other capital outlay needs considered essential to maintain a unitary school system.

5. Recommendations of the Biracial Committee

a. Serve as the school administration liaison with the Biracial Committee.

b. Review and analyze reports by the Biracial Committee to determine if actions are needed to improve the county's desegregation efforts.

6. Educational Programs

a. Analyze the impact of the county's desegregation on the educational program for pupils.

b. Analyze the effect of the county's educational programs on Spanish-American and other minority pupils.

c. Consult with and make recommendations to the Division of Instruction and district superintendents for program improvements.

7. Court Appearances and Court Decisions

a. Meet as needed with court officials to discuss and testify concerning the county's efforts and policies in desegregation.

b. Meet with court officials to discuss various court decisions and requirements, explore options, and interpret Board policies and guidelines.

c. Consult and work closely with School Board attorneys on all desegregation matters.

8. Staff/Pupil Assignments and Transfers

a. Alert personnel and attendance departments to problems developing in maintenance of staff/pupil racial-ratio and make recommendations for correction or improvement of ratios.

b. Make recommendation in identification/placement of administrative supervisory personnel.

c. Develop policies and make recommendations concerning pupil/teacher transfers.

B. Intensifying Provisions for Human Relations

While various policies and programs may be established to improve desegregation, their success eventually depends upon the human element: the ability of pupils, teachers, administrators, and parents to meet and work together day-by-day in the schools and the community. The Office for School Desegregation should:

1. Determine the need for human relations training as it relates to specific districts and schools.

2. Review and approve district and school proposals for use of human relations funds.
3. Establish priorities and assign activities to the established human relations team.
4. Review and develop policies and guidelines for the improvement of pupil/teacher/parent interaction.

C. Assisting Schools and District Personnel with Crises and School Disruptions

While this area relates to the human relations aspect described above, its main emphasis is on the interpretation and handling of school crises and disruptions once they occur. The Office for School Desegregation will:

1. Review and develop policies and guidelines for the control of student behavior. This includes suspensions/expulsions as they relate to racial issues.
2. Review the planning for emergency procedures in the school in relation to the district and county offices, security, police and community groups and agencies.
3. Review district and individual school plans and procedures to be followed to bring stability to a school following a crisis or disruption.

It is important that district offices keep the Office for School Desegregation fully informed as to all actual and potentially disruptive incidents.

D. Working with Community Agencies

The school system does not stand alone in the process of desegregation. Its plans and decisions affect and are affected by the community and the community agencies surrounding it. It is important that the school system develop and maintain the understanding, support and involvement of the community as it proceeds with desegregation. This effort may be referred to as community relations much as the human relations aspect described above. This involvement with the community begins in the parent group required to be in operation in each school. The responsibility of the Office for School Desegregation is in assisting the school and the district and county offices in maintaining contact with community groups and associations. This effort should be directed toward developing community acceptance of desegregation.